

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

BRIAN REAVES, on behalf of himself and
all others similarly situated,

Plaintiffs,

v.

MFS SERIES TRUST I, et al.,

Defendants.

Civil Action No. 05-CV-10804 (MEL)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION TO STAY PROCEEDINGS IN THIS CASE**

All Defendants hereby submit this Memorandum of Points and Authorities in support of their motion to stay further proceedings in this case until the Judicial Panel on Multidistrict Litigation ("JPML") rules on Defendants' application to transfer the case to the United States District Court for the District of Maryland for pretrial proceedings in coordination with the mutual fund "market timing" multidistrict litigation now pending there.

Introduction

Plaintiff Brian Reaves, purportedly on behalf of himself and others similarly situated, filed his Complaint in Suffolk County Superior Court on March 21, 2005. In it, Plaintiff claims that he owns shares of a mutual fund, the MFS Value Fund, that require him to pay a contingent deferred sales charge in the event he redeems the shares prior to the expiration of six years from the date he purchased them. Compl. ¶¶ 1, 7. Plaintiff admits he agreed to pay these charges when he purchased his shares, but now desires to avoid this obligation because Defendants allegedly "engage[ed] in various forms of misconduct, including market timing . . . [and] unfair business practices" regarding MFS mutual funds. *Id.* ¶¶ 2, 20, 30. Plaintiff sue s ten different

MFS management investment companies on this claim, in addition to the one that issued his shares.

Defendants timely removed the case to this Court on April 22, 2005 (dkt. 1). On April 26, Defendants filed a Notice of Tag-Along Action with the Judicial Panel on Multidistrict Litigation (“JPML” or “Panel”) (dkt. 2), seeking transfer of the case to the United States District Court for the District of Maryland (“MDL Court”), for coordinated or consolidated pretrial proceedings with more than 20 other cases the JPML previously transferred to the MDL Court alleging market timing with respect to MFS mutual funds, and over 300 other cases asserting similar claims with respect to other mutual fund “complexes.”

On May 6, the JPML issued a Conditional Transfer Order (“CTO”) to transfer this case to the MDL Court. (CTO-17, Ex. 1 hereto). According to the Panel, this case “appears . . . [to] involve[] questions of fact which are common to the actions previously transferred to the District of Maryland.” *Id.*

On May 9, Plaintiffs and Defendants stipulated that Defendants would have through and including June 10 to answer, move or otherwise respond to the Complaint (dkt. 4).

On June 6, Plaintiff filed a Motion to Remand in this Court (dkt. 6). Plaintiff argues in that motion that his Complaint alleges “a single cause of action for breach of contract on behalf of certain *holders* of mutual fund shares,” and is therefore not within the original jurisdiction of this Court. Memorandum in support of Motion to Remand, at 1 (emphasis in original).

On June 7, Plaintiff filed a Motion to Vacate the CTO with the JPML, arguing that the case should not be transferred to the MDL Court. The Panel’s rules allow Defendants twenty days to respond to that motion. *See* JPML Rule 7.2(c). The rules also require that the motion be

considered at the Panel's next appropriate hearing session which, in this case, will be in July. See JPML Rule 7.4(d).

ARGUMENT

As Defendants will argue to the JPML, this case is appropriate for pretrial case management with other "market timing" cases pending against MFS defendants in the MDL Court – including numerous cases transferred by this Court. (*See, e.g.*, CTO-4, CTO-5, Ex. 2). If the JPML agrees, and the case is transferred to the MDL Court, then unless a stay is entered now, "all of the Court's time, energy, and acquired knowledge regarding this action and its pretrial procedures will be wasted." *U.S. Bank, Nat'l Ass'n. v. Royal Indem. Co.*, No. 3:02-CV-0853-P, 2002 WL 31114069, at *2 (N.D. Tex. Sept. 23, 2002).

1. A Stay Would Serve The Interest Of Judicial Economy And Consistency

The JPML decided last year that "all actions [involving] common questions of fact concerning allegations of market timing and/or late trading in the mutual fund industry" should be transferred to the MDL Court for consolidated or coordinated pretrial case management. (JPML Order, Feb. 20, 2004, Ex. 3 at p. 3.) According to the JPML, these cases all "focus on similar mutual fund trading practices and procedures with some common defendants and/or witnesses. Section 1407 centralization of all the actions . . . is necessary in order to avoid duplication of discovery, prevent inconsistent or repetitive pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary. Resolution of overlapping issues, concerning similar conduct in the mutual fund industry, will be streamlined." *Id.*

The Complaint in this case is based on allegations of misconduct that are virtually identical to those in the cases pending before the MDL Court: Plaintiff alleges that Defendants engaged in "various forms of misconduct, including market timing." Compl. ¶ 20. The same

allegations are at the core of each of the cases pending against MFS defendants in the MDL. While the claims asserted and the relief sought by the plaintiffs in these cases vary in form, they do not vary in substance – they all seek damages on behalf of either the funds or shareholders directly based on this alleged misconduct. Transfer is therefore warranted. *See, e.g., In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 223 F. Supp. 2d 1388, 1389 (J.P.M.L. 2002) (transferring and consolidating actions alleging that broker failed to disclose conflicts of interests “to eliminate duplicative discovery, prevent inconsistent pretrial rulings . . . and conserve the resources of the parties”); *In re Nortel Networks Corp. Sec & “ERISA” Litig.*, 269 F. Supp. 2d 1367, 1368 (J.P.M.L. 2003) (centralizing litigation in which the defendants were alleged to have breached common law duties owed to members of putative class).¹

In similar cases, a “majority of courts have concluded that it is . . . appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved.” *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997). *See also U.S. Bank*, 2002 WL 31114069, at *2 (staying proceedings on 12(b)(6) motions because so as to avoid an “unnecessary waste of judicial resources if the MDL Motion is ultimately granted”); *Weinke v. Microsoft Corp.*, 84 F. Supp. 2d 989, 990 (E.D. Wis. 2000) (staying proceedings pending MDL transfer decision to conserve judicial resources and avoid inconsistent results); *Aikins v. Microsoft Corp.*, No. Civ. A. 00-0242, 2000 WL 310391, at *1-2 (E.D. La. Mar. 24, 2000) (same); *Tench v. Jackson Nat’l Life Ins. Co.*, No. 99 C 5182, 1999 WL 1044923, at *1-2 (N.D. Ill. Nov. 12, 1999) (same). Indeed, many district courts have entered stays in cases that were subsequently transferred to the

¹ The case for transfer is stronger still because all these cases involve potentially overlapping putative classes. Cases such as these present the greatest chance for pretrial administrative “chaos” and are especially appropriate for consolidation. *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 493 (J.P.M.L. 1968); *see also Pepsi-Cola Bottling Co. of Olean v. Cargill, Inc.*, No. 3-95-784, 1995 WL 783610, at *4 (D. Minn. Oct. 20, 1995).

MDL Court in connection with the mutual fund market timing litigation. *See, e.g., Parisi v. Marsh & McLennan Cos.*, No. Civ. A. 04-2091-KHV, 2004 WL 1534181 at *1-2 (D. Kan. Apr. 6, 2004) (staying proceedings so MDL Court could resolve jurisdictional issue common to other cases before it: whether state law claims based on improper market timing raise a substantial federal question under the Investment Company Act of 1940); *Nekritz v. Canary Capital Partners, LLC*, No. Civ. 03-5081, 2004 WL 1462035 at *4 (D. N.J. Jan. 12, 2004) (where several removed class actions involved broadly similar factual allegations and same jurisdictional issues under SLUSA, judicial economy was best served by leaving remand motion to transferee court); *see also Fienerstein v. Marsh & McLennan Cos.*, No. 03-12474 (D. Mass. Mar. 3, 2004); *Sayegh v. Janus Capital Corp.*, No. CV-03-08736 (C.D. Cal. Mar. 22, 2004); *Sherman v. Marshall*, No. 2:03-cv-1037 (S.D. Ohio Jan. 14, 2004) (Ex. 4).

Courts favor stays pending Panel transfer decisions because proceedings in multiple jurisdictions impose undue costs on the litigants and threaten to waste scarce judicial resources. For example, in *Hertz Corporation v. Gator Corporation*, the United States District Court for the District of New Jersey stayed an action seeking preliminarily to enjoin the defendants from using Internet “pop-up” ads. *See* 250 F. Supp. 2d 421, 427-28 (D.N.J. 2003). The court explained that “[t]he heavy financial burden on [a defendant] borne by having to defend . . . in multiple fora” constituted “a clear hardship weighing in favor of staying [an] action” pending the Panel’s transfer decision. *Id.* The court further explained that, absent a stay, parallel pretrial proceedings in multiple fora would potentially waste judicial resources and impose a risk of duplicative discovery and inconsistent rulings of important pretrial legal issues. *See id.*

2. A Pending Motion To Remand Does Not Require A Stay To Be Denied

The fact that Plaintiff has filed a Motion to Remand should not lead to a different result. While this Court obviously has jurisdiction to decide Plaintiff's motion, deferring consideration of it until the Panel's transfer decision would conserve judicial resources and serve the interest of judicial consistency. Indeed, counsel for Plaintiff has filed very similar complaints against a number of other mutual fund "complexes," based on similar allegations of misconduct, advancing the same legal theories, and seeking identical relief, in state courts in Massachusetts and elsewhere. These other cases include *Delaventura v. Columbia Acorn Trust et al.*, No. 05-10793-WGY (D. Mass.), *Maxwell v. Pimco Funds*, No. 8:05-CV-00479-JVS-AN (C.D. Cal.), and *Press v. Putnam Investment Funds*, No. 05-10923-NG (D. Mass.), all of which were removed to federal court, all of which were "tagged" for transfer to the MDL Court, and all of which have been or will be conditionally transferred to the MDL Court. Moreover, in each of these cases, the plaintiffs have filed or will file motions to remand. Accordingly, if the Panel concludes that these cases belong before the MDL Court, they will be transferred to that court, and the judges presiding there will be able to consider the remand motions together, thereby conserving judicial resources and leading to a uniform result on the plaintiffs' arguments.

Proceeding in this manner, and achieving these goals, is even more important because the issues presented in Plaintiff's motion are complex, and will involve analysis of several very recent decisions from other circuits. *See, e.g., Kircher v. Putnam Funds Trust*, 403 F.3d 478 (7th Cir. Apr. 5, 2005); *Rowinski v. Salomon Smith Barney Inc.*, 398 F.3d 294 (3d Cir. Feb. 16, 2005); *Dabit v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 395 F.3d 25 (2d Cir. Jan. 11, 2005). In fact, while one court in this jurisdiction previously remanded a breach of fiduciary duty case involving allegations of mutual fund market timing, *see Meyer v. Putnam Int'l Voyager Fund*,

220 F.R.D. 127 (D. Mass. 2004), that case was decided prior to the rulings in these cases, and in fact the outcome in that case directly conflicts with at least one of these recent opinions.

Compare Kircher, 403 F.3d at 483-84 (plaintiffs cannot avoid federal preemption under the Securities Litigation Uniform Standards Act [“SLUSA”] by claiming to be “holders” of mutual fund shares), *with Meyer*, 220 F.R.D. at 129 (claims asserted by “holders” of mutual fund shares are not preempted by SLUSA).

In cases such as this, considerations of judicial economy and consistency have frequently led courts to defer ruling on remand motions until JPML transfer decisions are made. For example, in *In re Ivy*, 901 F.2d 7 (2d Cir. 1990), the Second Circuit upheld the decision of a district court to defer ruling on a remand motion pending transfer of the case to a pending multidistrict litigation. According to the court of appeals, “[o]nce transferred, the jurisdictional objections can be heard and resolved by a single court and reviewed at the appellate level in due course. Consistency as well as economy is thus served.” *Id.* at 9. *See also Bd. of Trs. of the Teachers’ Ret. Sys. v. Worldcom, Inc.*, 244 F. Supp. 2d 900, 903-06 (N.D. Ill. 2002) (“Judicial economy favors a stay. Having one court rather than three decide complex jurisdictional issues obviously saves judicial resources.”); *Med. Society of the State of New York v. Conn. Gen. Corp.*, 187 F. Supp. 2d 89, 91 (S.D.N.Y. 2001) (placing remand motion on Court’s suspense docket pending Panel’s transfer decision and finding significant economies from having single court decide federal preemption questions); *Aikins*, 2000 WL 310391, at *1 (granting stay to promote consistency and economy, and ruling that plaintiff may reassert motion to remand if Panel declines to consolidate cases); *Johnson v. AMR Corp.*, No. 95 C 7659, 1996 WL 164415, at *3-4 (N.D. Ill. Apr. 3, 1996) (granting stay and deferring decision on motion to remand until Panel rules on transfer based on “obvious” benefit that “jurisdictional objections can be heard and

resolved by a single court and reviewed at the appellate level in due course” (citation omitted)); *Boudreaux v. Metro. Life Ins. Co.*, Civ. A. No. 95-138, 1995 WL 83788, at *2 (E.D. La. Feb. 24, 1995) (“Because the issue involved in this remand motion is likely to be common to other transferred cases, the policies of efficiency and consistency of pre-trial rulings are furthered by a stay of the proceedings in this Court pending a decision on the conditional transfer order.”).

Certainly there are cases in which remand motions are heard prior to resolution of transfers to courts presiding over multidistrict cases. Proceeding in that manner makes sense where the question presented is “easy,” or involves a state law issue unique to a case or cases pending in a single court. *See Worldcom*, 244 F. Supp. 2d at 903; *see also In re Mass. Diet Drug Litig.*, 338 F. Supp. 2d 198, 201 (D. Mass. 2004) (remand motions in cases pending before Judge O’Toole turn on same question of state law which “does not appear . . . likely to arise in other . . . litigation in other courts”); *Bellorin v. Bridgestone/Firestone, Inc.*, 236 F. Supp. 2d 670, 676 (W.D. Tex. 2001) (“issues raised by Plaintiffs’ Motion to Remand are unique to this case”). Some cases also involve case-specific determinations about whether the amount in controversy is established. *See, e.g., Tortola Restaurants, LP v. Kimberly-Clark Corp.*, 987 F. Supp. 1186, 1189 (N.D. Cal. 1997). Plaintiff’s case, however, shares none of these characteristics. Instead, it and the others Plaintiff’s counsel has filed present complex issues of federal jurisdiction that should be resolved in a manner that maximizes judicial economy and advances the interest of judicial consistency.

3. Plaintiff Will Not Be Prejudiced By A Stay

Plaintiff will not be prejudiced by a stay of the proceedings in this Court pending resolution of his Motion to Vacate by the Panel. As the district court held in *Sherman v. Marhsall*, “[t]his litigation is in its very early stages . . . [Plaintiff’s] motion to remand remains

pending and, depending on the outcome of the [motion to transfer] will be ruled upon by either the undersigned judge or the transferee judge.” No. 2:03-cv-1037 (S.D. Ohio, Jan. 14, 2004) (Ex. 4). In addition, the JPML has recognized that consolidating cases for pretrial proceedings permits plaintiffs to “experience a net savings of time, effort and expenses through [the] pooling [of] resources with other plaintiffs in the transferee district who share similar interests.” *In re Stirling Homex Corp. Sec. Litig.*, 405 F. Supp. 314, 316 (J.P.M.L. 1975); *see also In re Diet Drug (Prods.) Liab. Litig.*, 990 F. Supp. 834, 836 (J.P.M.L. 1998) (noting that all parties can benefit from the “economies of scale” made possible by consolidated proceedings).

For reasons of judicial economy, and in deference to the MDL Panel’s mandate to coordinate federal market-timing litigation, this Court should stay proceedings in this case pending a decision by the JPML regarding transfer of the case to the MDL Court.

Conclusion

For all the foregoing reasons, Defendants ask this Court to stay all deadlines, briefing schedules, and other proceedings in this Court until the JPML has ruled on Defendants’ application to transfer this case to the MDL Court.

Dated: June 10, 2005

Respectfully submitted,

/s/ Jane E. Willis

John D. Donovan, Jr. (BBO#130950)

Jane E. Willis (BBO#568024)

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Counsel for ALL DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served on the attorney of record for each party in this matter by filing the document electronically with this Court, using the Court's ECF filing system, on this 10th day of June, 2005.

/s/ Jane E. Willis
Jane E. Willis

EXHIBIT 1

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

MAY - 6 2005

FILED
CLERK'S OFFICE

DOCKET NO. 1586

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE MUTUAL FUNDS INVESTMENT LITIGATION

Dean Delaventura v. Columbus Acorn Trust, et al., D. Massachusetts,
C.A. No. 1:05-10793

Brian Reaves v. MFS Series Trust I, et al., D. Massachusetts, C.A. No. 1:05-10804

CONDITIONAL TRANSFER ORDER (CTO-17)

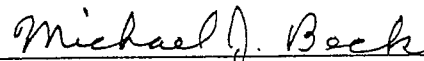
On February 20, 2004, the Panel transferred 91 civil actions to the United States District Court for the District of Maryland for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. Since that time, 326 additional actions have been transferred to the District of Maryland. With the consent of that court, all such actions have been assigned to the Honorable J. Frederick Motz, the Honorable Andre Davis and the Honorable Catherine C. Blake.

It appears that the actions on this conditional transfer order involve questions of fact which are common to the actions previously transferred to the District of Maryland.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), these actions are transferred under 28 U.S.C. § 1407 to the District of Maryland for the reasons stated in the order of February 20, 2004, 310 F.Supp.2d 1359 (J.P.M.L. 2004), and, with the consent of that court, assigned to the Honorable J. Frederick Motz, the Honorable Andre Davis and the Honorable Catherine C. Blake.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the District of Maryland. The transmittal of this order to said Clerk shall be stayed fifteen (15) days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen (15) day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:



Michael J. Beck
Clerk of the Panel

RULE 5.2: SERVICE OF PAPERS FILED

(a) All papers filed with the Clerk of the Panel shall be accompanied by proof of previous or simultaneous service on all other parties in all actions involved in the litigation. Service and proof of service shall be made as provided in Rules 5 and 6 of the Federal Rules of Civil Procedure. The proof of service shall indicate the name and complete address of each person served and shall indicate the party represented by each. If a party is not represented by counsel, the proof of service shall indicate the name of the party and the party's last known address. The proof of service shall indicate why any person named as a party in a constituent complaint was not served with the Section 1407 pleading. The original proof of service shall be filed with the Clerk of the Panel and copies thereof shall be sent to each person included within the proof of service. After the "Panel Service List" described in subsection (d) of this Rule has been received from the Clerk of the Panel, the "Panel Service List" shall be utilized for service of responses to motions and all other filings. In such instances, the "Panel Service List" shall be attached to the proof of service and shall be supplemented in the proof of service in the event of the presence of additional parties or subsequent corrections relating to any party, counsel or address already on the "Panel Service List."

(b) The proof of service pertaining to motions for transfer of actions pursuant to 28 U.S.C. §1407 shall certify that copies of the motions have been mailed or otherwise delivered for filing to the clerk of each district court in which an action is pending that will be affected by the motion. The proof of service pertaining to a motion for remand pursuant to 28 U.S.C. §1407 shall certify that a copy of the motion has been mailed or otherwise delivered for filing to the clerk of the Section 1407 transferee district court in which any action affected by the motion is pending.

(c) Within eleven days of filing of a motion to transfer, an order to show cause or a conditional transfer order, each party or designated attorney shall notify the Clerk of the Panel, in writing, of the name and address of the attorney designated to receive service of all pleadings, notices, orders and other papers relating to practice before the Judicial Panel on Multidistrict Litigation. Only one attorney shall be designated for each party. Any party not represented by counsel shall be served by mailing such pleadings to the party's last known address. Requests for an extension of time to file the designation of attorney shall not be granted except in extraordinary circumstances.

(d) In order to facilitate compliance with subsection (a) of this Rule, the Clerk of the Panel shall prepare and serve on all counsel and parties not represented by counsel, a "Panel Service List" containing the names and addresses of the designated attorneys and the party or parties they represent in the actions under consideration by the Panel and the names and addresses of the parties not represented by counsel in the actions under consideration by the Panel. After the "Panel Service List" has been received from the Clerk of the Panel, notice of subsequent corrections relating to any party, counsel or address on the "Panel Service List" shall be served on all other parties in all actions involved in the litigation.

(e) If following transfer of any group of multidistrict litigation, the transferee district court appoints liaison counsel, this Rule shall be satisfied by serving each party in each affected action and all liaison counsel. Liaison counsel designated by the transferee district court shall receive copies of all Panel orders concerning their particular litigation and shall be responsible for distribution to the parties for whom he or she serves as liaison counsel.

INVOLVED COUNSEL LIST (CTO-17)

DOCKET NO. 1586

IN RE MUTUAL FUNDS INVESTMENT LITIGATION

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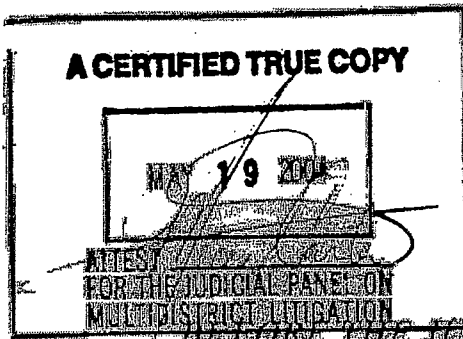
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Boston, MA 02110

EXHIBIT 2

15



FILED _____ ENTERED _____
 LODGED _____ RECEIVED _____

MAY 24 2004

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

MAY 03 2004

AT BALTIMORE
 CLERK U.S. DISTRICT COURT
 DISTRICT OF MARYLAND DEPUTY

FILED
 CLERK'S OFFICE

DOCKET NO. 1586

IN RE MUTUAL FUNDS INVESTMENT LITIGATION

(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO-4)

On February 20, 2004, the Panel transferred 91 civil actions to the United States District Court for the District of Maryland for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. Since that time, 210 additional actions have been transferred to the District of Maryland. With the consent of that court, all such actions have been assigned to the Honorable J. Frederick Motz, the Honorable Andre M. Davis, the Honorable Frederick P. Stamp, Jr., and the Honorable Catherine C. Blake.

It appears that the actions on this conditional transfer order involve questions of fact which are common to the actions previously transferred to the District of Maryland.

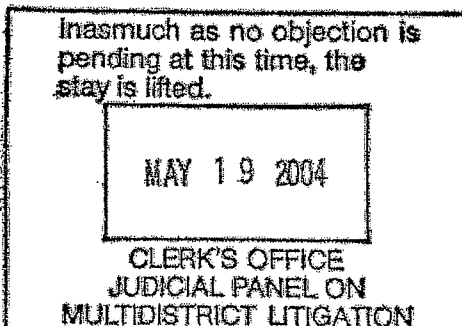
Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), these actions are transferred under 28 U.S.C. § 1407 to the District of Maryland for the reasons stated in the order of February 20, 2004, F.Supp.2d (J.P.M.L. 2004), and, with the consent of that court, assigned to the Honorable J. Frederick Motz, the Honorable Andre M. Davis, the Honorable Frederick P. Stamp, Jr., and the Honorable Catherine C. Blake.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the District of Maryland. The transmittal of this order to said Clerk shall be stayed fifteen (15) days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen (15) day period, the stay will be continued until further order of the Panel.

FOR THE PANEL

Michael J. Beck

Michael J. Beck
 Clerk of the Panel



SCHEDULE CTO-4 - TAG ALONG CASES
DOCKET NO. 1586
IN RE MUTUAL FUNDS INVESTMENT LITIGATION

DISTRICT DIV. C.A. #

FLORIDA SOUTHERN
FLS 0 04-60420

Anita Cullen v. Templeton Growth Fund, Inc., et al. 04-1613

ILLINOIS SOUTHERN
~~ILS 3 04-179~~

~~Joseph Parisc, Jr., etc. v. Templeton Funds, Inc., et al. Vacated 5/17/04~~

NEVADA

NV 2 03-1644
NV 2 04-96

Marvin Kaplan, et al. v. Security Brokerage, Inc., et al. 04-1614
Tim Christman v. Security Brokerage, Inc., et al. 04-1615

NEW YORK SOUTHERN

NYS 1 03-8939
NYS 1 03-10191
NYS 1 04-1045
NYS 1 04-1143
NYS 1 04-1185
NYS 1 04-1915
NYS 1 04-2114
NYS 1 04-2170
NYS 1 04-2489

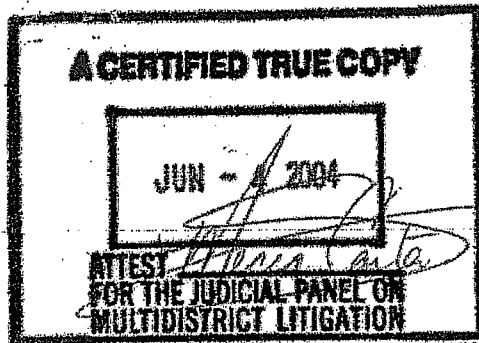
Robert P. Kelly v. Strong Capital Management, Inc. 04-1616
Allen Colvin, et al. v. Massachusetts Financial Services Co., et al. 04-1617
Juliet Rintoul v. Massachusetts Financial Services Co., et al. 04-1618
Ed Casey v. Federated Global Investment Management Corp. 04-1619
John Hammerslough v. Massachusetts Financial Services Co. 04-1620
1199 Seiu Greater New York Pension Fund, et al. v. Marsh & McLennan Companies, Inc., et al. 04-1621
Richard A. Rehbock v. Alliance Capital Management Corp., et al. 04-1622
Robert J. Moccock v. Scudder 21st Century Growth Fund, et al. 04-1623
Hedi Hertz, etc. v. Harmon E. Burns, et al. 04-1624

WISCONSIN EASTERN

WIE 2 03-1448
WIE 2 04-260
WIE 2 04-261

Jackson T. Ferris, et al. v. Strong Capital Management, Inc., et al. 04-1625
Sean Wilson, etc. v. Richard S. Strong, et al. 04-1626
Brian Munroe, etc. v. Richard D. Strong, et al. 04-1627

24



JUN 7 2004
CLERK
DEPUTY

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

MAY 19 2004

FILED
CLERK'S OFFICE

DOCKET NO. 1586

*BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**IN RE MUTUAL FUNDS INVESTMENT LITIGATION**(SEE ATTACHED SCHEDULE)***CONDITIONAL TRANSFER ORDER (CTO-5)**

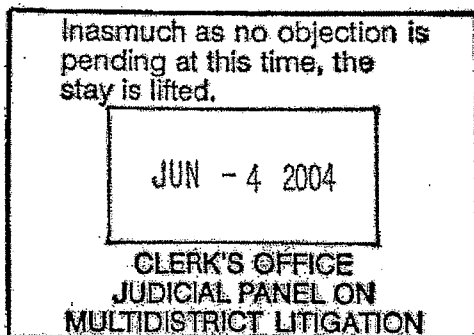
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FOR THE PANEL:



Michael J. Beck

Michael J. Beck
Clerk of the Panel

SCHEDULE CTO-5 - TAG ALONG ACTIONS
DOCKET NO. 1586
IN RE MUTUAL FUNDS INVESTMENT LITIGATION

DISTRICT DIV. C.A.#

MASSACHUSETTS

MA	1	03-12514	04-1750	Oliver S. Trone v. MFS Capital Opportunities Fund, et al.
MA	1	03-12515	04-1751	Delores B. Manson, etc. v. Massachusetts Financial Services Co., et al.
MA	1	03-12520	04-1752	David Shaev v. Massachusetts Financial Services Co.
MA	1	03-12536	04-1753	Danielle Adams, et al. v. MFS Capital Opportunities Fund, et al.
MA	1	03-12545	04-1754	Steven Greenberg v. Massachusetts Financial Services Co., et al.
MA	1	03-12570	04-1755	Jacob Elephant, et al. v. Massachusetts Financial Services Co., et al.
MA	1	03-12595	04-1756	Zachary Alan Starr, etc. v. Massachusetts Financial Services Co., et al.
MA	1	03-12622	04-1757	Yakov Burstein, IRA, et al. v. MFS Global Telecommunications Fund, et al.
MA	1	03-12629	04-1758	Anita Walker v. Massachusetts Financial Services Co., et al.
MA	1	04-10009	04-1759	Albert Feldman v. Massachusetts Financial Services Co., et al.
MA	1	04-10010	04-1760	Ed Casey v. Massachusetts Financial Services Co.
MA	1	04-10252	04-1761	Hugh F. Boyd, III, et al. v. Massachusetts Financial Services Co., et al.
MA	1	04-10253	04-1762	Harold A. Berger v. Massachusetts Financial Services Co., et al.
MA	1	04-10315	04-1763	Catherine Dukes v. Columbia Acorn Fund, et al.
MA	1	04-10355	04-1764	AB Medical Equipment Corp. v. FleetBoston Financial Corp., et al.
MA	1	04-10408	04-1765	Lawrence S. Wick, et al. v. FleetBoston Financial Corp., et al.
MA	1	04-10434	04-1766	Diane Hutto, etc. v. Massachusetts Financial Services Co., et al.
MA	1	04-10452	04-1767	Boris Fieldman, etc. v. Massachusetts Financial Services Co., et al.
MA	1	04-10534	04-1768	George Slaybe, et al. v. Columbia Management Advisors, Inc.
MA	1	04-10555	04-1769	David Armetta, etc. v. FleetBoston Financial Corp., et al.
MA	1	04-10556	04-1770	Todd Klein, etc. v. John A. Hill, et al.
MA	1	04-10557	04-1771	Steven Wiegand, etc. v. John A. Hill, et al.
MA	1	04-10567	04-1772	Edward I. Segel, et al. v. FleetBoston Financial Corp., et al.
MA	1	04-10603	04-1773	Luann K. Caprio v. Columbia Acorn Fund, et al.

EXHIBIT 3

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

FEB 20 2004

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RELEASED FOR PUBLICATION

DOCKET NOS. 1576, 1577, 1582, 1585, 1586, 1590 & 1591

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL-1576--IN RE JANUS MUTUAL FUNDS INVESTMENT LITIGATION

MDL-1577--IN RE STRONG MUTUAL FUNDS INVESTMENT LITIGATION

**MDL-1582--IN RE BANK ONE MUTUAL FUNDS INVESTMENT
LITIGATION**

**MDL-1585--IN RE BANK OF AMERICA MUTUAL FUNDS INVESTMENT
LITIGATION**

MDL-1586--IN RE MUTUAL FUNDS INVESTMENT LITIGATION

MDL-1590--IN RE PUTNAM MUTUAL FUNDS INVESTMENT LITIGATION

**MDL-1591--IN RE ALLIANCE CAPITAL MUTUAL FUNDS INVESTMENT
LITIGATION**

**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN,
BRUCE M. SELYA, D. LOWELL JENSEN, J. FREDERICK MOTZ AND
ROBERT L. MILLER, JR., JUDGES OF THE PANEL**

ORDER

* Three members of the Panel would be disqualified in this matter due to shareholdings in one or more of the interested parties, and one Panel seat was vacant at the time the matter was considered. The Panel therefore invoked the "rule of necessity" and all members participated in the decision in order to provide the forum created by the governing statute, 28 U.S.C. § 1407. See *In re Wireless Telephone Radio Frequency Emissions Products Liability Litigation*, 170 F.Supp.2d 1356, 1357-58 (J.P.M.L. 2001).

IMAGED FEB 20 '04

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Before the Panel are seven dockets involving market timing/late trading allegations primarily against six different families of mutual funds.¹ In six dockets – MDL-1576 (Janus), MDL-1577 (Strong), MDL-1582 (Bank One), MDL-1585 (Bank of America), MDL-1590 (Putnam) and MDL-1591 (Alliance) – various plaintiff and/or defendant movants in each docket² seek centralization of the actions now before the Panel³ and later-filed related actions under 28 U.S.C. § 1407 on a fund-by-fund basis – usually in the federal district in which the mutual fund family is headquartered or has significant contacts. In the remaining docket – MDL-1586 – the Canary parties⁴ seek centralization of all market timing/late trading mutual fund actions and later-filed related actions⁵ in one multidistrict docket.

All responding parties in actions now before the Panel support coordinated or consolidated Section 1407 proceedings on either a fund-by-fund basis or as one multidistrict docket. Some movants and/or various responding parties suggest selection of the Southern District of New York or the District of New Jersey as transferee district for several of these dockets. If the Panel deems centralization on a fund-by-fund basis to be appropriate, other suggested transferee districts include the following: District of Colorado (MDL-1576); Eastern or Western Districts of Wisconsin (MDL-1577); Northern District of Illinois or Southern District of Ohio (MDL-1582); Central District of California or Western

¹ At the hearing session in these seven dockets, the Panel heard combined oral argument. Accordingly, the overlapping issues raised in these dockets are addressed in this one order.

² Movants in these six dockets are as follows: MDL-1576 involves two separate motions – one by plaintiff in one Colorado action and the other by Janus Capital Group, Inc., and Janus Capital Management LLC; the MDL-1577 motion is brought by plaintiff in one Wisconsin action; the MDL-1582 motion is brought by Bank One Corporation and Banc One; the MDL-1585 motion is brought by plaintiffs in one California action; the MDL-1590 motion is brought by Putnam Investments Trust, Putnam Investment Management, LLC, Putnam Investment Funds, Marsh & McLennan Companies, Inc., particular Putnam mutual funds and various individual trustees, directors and employees; and the MDL-1591 motion is brought by Alliance Capital Management L.P., Alliance Capital Management Holding L.P. and Alliance Capital Management Corp.

³ One action on the MDL-1590 motion – *Carl Kircher, et al. v. Putnam Funds Trust, et al.*, S.D. Illinois, C.A. No. 3:03-691 – was remanded to Illinois state court on January 27, 2004. Accordingly, the question of inclusion of this action in Section 1407 pretrial proceedings is moot.

⁴ Canary Capital Partners, LLC; Canary Capital Partners, Ltd.; Canary Investment Management, LLC; and one affiliated individual.

⁵ Thirty-five actions which were not included in the MDL-1586 motion, but were included in the motions in MDLs 1585, 1590 or 1591, are now included in this transfer order. All parties to these actions had notice of the proceedings before the Panel relating to Section 1407 transfer of their actions for coordinated or consolidated pretrial proceedings and had an opportunity to state their respective positions in writing and at the Panel's January 29, 2004 hearing session regarding the matters now before the Panel.

The Panel has been notified that more than 170 potentially related actions have been filed in these seven dockets. These actions and any other related actions will be treated as potential tag-along actions in MDL-1586. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

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District of North Carolina (MDL-1585); District of Massachusetts or District of Connecticut (MDL-1590); and Eastern District of New York (MDL-1591).

On the basis of the papers filed and hearing session held, the Panel finds that all actions in these seven dockets involve common questions of fact concerning allegations of market timing and/or late trading in the mutual fund industry. Whether the actions be brought by securities holders seeking relief under the federal securities laws or shareholders suing derivatively on behalf of the involved mutual funds, all actions can be expected to focus on similar mutual fund trading practices and procedures with some common defendants and/or witnesses. Section 1407 centralization of all the actions as one multidistrict docket (MDL-1586) in the District of Maryland will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Congregating these mutual fund market timing/late trading actions there is necessary in order to avoid duplication of discovery, prevent inconsistent or repetitive pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary. Resolution of overlapping issues, concerning similar conduct in the mutual fund industry, will be streamlined. *See In re Managed Care Litigation*, 2000 U.S. Dist. LEXIS 15927 (J.P.M.L. Oct. 23, 2000).

Opponents of Section 1407 centralization of all actions in one multidistrict litigation argue that the presence of unique questions of fact relating to each mutual fund family should produce a different result. These parties urge us, instead, to centralize related actions/claims on a fund-by-fund basis. We are unpersuaded by these arguments. Indeed, we point out that transfer to a single district under Section 1407 has the salutary effect of placing all mutual fund market timing/late trading actions before one court which can formulate a pretrial program that: 1) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products Liability Litigation*, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. We note that the MDL-1586 transferee court can employ any number of pretrial techniques – such as establishing separate discovery and/or motion tracks for each mutual fund family and/or separate tracks for the different types of actions involved – to efficiently manage this litigation. In any event, we leave the extent and manner of coordination or consolidation of these securities and derivative claims as well as related claims arising under any other federal and/or state laws to the discretion of the transferee court. *In re Equity Funding Corp. of America Securities Litigation*, 375 F.Supp. 1378, 1384-85 (J.P.M.L. 1974).

Given the geographic dispersal of constituent actions and potential tag-along actions, no district stands out as the geographic focal point for this nationwide litigation. Thus we have searched for a transferee district with the capacity and experience to steer this litigation on a prudent course. In addition, this litigation encompasses complex claims against multiple mutual funds by a vast number of plaintiffs/putative class members which could potentially i) present various disqualification issues and/or ii) consume much attention from one transferee judge. Accordingly, the Panel has decided to

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entrust this litigation to multiple transferee judges,⁶ sitting individually and/or jointly in their own discretion, in the District of Maryland.

IT IS THEREFORE ORDERED that the motions for centralization of actions/claims on a fund-by-fund basis in MDL-1576 (Schedule A), MDL-1577 (Schedule B), MDL-1582 (Schedule C), MDL-1585 (Schedule D), MDL-1590 (Schedule E) and MDL-1591 (Schedule F) are denied.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1407, the actions on the attached Schedule G are transferred to the District of Maryland and, with the consent of that court, assigned to the Honorable J. Frederick Motz, the Honorable Andre M. Davis and the Honorable Frederick P. Stamp, Jr. (sitting in the District of Maryland pursuant to an intracircuit assignment under 28 U.S.C. § 292) for coordinated or consolidated pretrial proceedings in MDL-1586.⁷ Each transferee judge shall have jurisdiction over the coordinated or consolidated pretrial proceedings in this litigation and each judge may act individually and/or jointly with respect to these proceedings as they may decide among themselves.⁸

FOR THE PANEL:



Wm. Terrell Hodges
Chairman

⁶ 28 U.S.C. § 1407(b); *In re Air Crash Disaster Near Chicago, Illinois, on May 25, 1979*, 476 F.Supp. 445 (J.P.M.L. 1979); *In re Sugar Industry Antitrust Litigation*, MDL-201A (J.P.M.L. May 5, 1978) (unpublished order).

⁷ Judge Stamp's designation as a transferee judge is subject only to the approval of the Honorable Irene M. Keeley, Chief Judge of the Northern District of West Virginia, who presently is out of the country. The Honorable Catherine C. Blake has also agreed to work with these three MDL-1586 transferee judges in organizing this docket and to serve as the first additional transferee judge if the exigencies of this docket so require and her schedule so permits.

⁸ Panel Rule 1.6(a), R.P.J.P.M.L., 199 F.R.D. at 428, requires clerks of transferor district courts to forward to the clerk of the transferee district court the complete original file and docket sheet for each transferred action. Because of the voluminous files in this docket, the MDL-1586 transferee judges have requested that the Panel partially suspend this rule in MDL-1586 and require the transferor district court clerks to forward only the docket sheet for each transferred action to the clerk of the District of Maryland. Accordingly, Panel Rule 1.6(a) is partially suspended in MDL-1586 for these actions and any subsequently transferred related actions. *In re Asbestos Products Liability Litigation (No. VI)*, 771 F.Supp. 415, 424 (J.P.M.L. 1991). Panel Rule 1.6(a) will thus remain in effect for the transmittal of docket sheets, while we will rely on the judgment of the transferee judges to request from the transferor district clerks or the parties whatever case files any of them needs.

SCHEDULE A

MDL-1576 -- In re Janus Mutual Funds Investment Litigation

District of Colorado

Vivian Bernstein v. Janus Capital Management, LLC, et al., C.A. No. 1:03-1798
Ronald Abrams, et al. v. Janus Fund, et al., C.A. No. 1:03-1817
John G. Hill, Jr. v. Janus Capital Group, Inc., et al., C.A. No. 1:03-1847
Leona A. Marini, etc. v. Janus Investment Fund, et al., C.A. No. 1:03-1857
Priya Vadehera v. Janus Capital Group, Inc., et al., C.A. No. 1:03-1871
Tara Goldstein v. Janus Capital Group, Inc., et al., C.A. No. 1:03-1884
Vivian Bernstein v. Janus Capital Management, LLC, et al., C.A. No. 1:03-1909

District of New Jersey

Andrew D. Mule, et al. v. Strong Capital Management, Inc., et al., C.A. No. 2:03-4221
Arthur Sylvester v. Janus Capital Group, Inc., et al., C.A. No. 2:03-4261
Rhonda Vladimir v. Janus Capital Management, LLC, et al., C.A. No. 2:03-4273
May Etsen, et al. v. Janus Fund, et al., C.A. No. 2:03-4369
Robert Corwin v. Thomas H. Bailey, et al., C.A. No. 2:03-4384
Herbert Morris, etc. v. Janus Capital Management, LLC, et al., C.A. No. 2:03-4453

Southern District of New York

Carol Pestone v. Janus Capital Group, Inc., et al., C.A. No. 1:03-6760
Brian Wormley, et al. v. Janus Capital Group, Inc., et al., C.A. No. 1:03-6790
Selma Stone, et al. v. Janus Fund, et al., C.A. No. 1:03-6914
James Schultz v. Janus Capital Management, LLC, et al., C.A. No. 1:03-7123
Roger L. Bailey v. Janus Capital Management, LLC, et al., C.A. No. 1:03-7125
Elsie Haig, et al. v. Janus Fund, et al., C.A. No. 1:03-7218
Jack Yarbrough, et al. v. Janus Fund, et al., C.A. No. 1:03-7333
Nechama Tepfer v. Janus Capital Group, Inc., et al., C.A. No. 1:03-7337

Eastern District of Pennsylvania

Gloria Steinberg, et al. v. Janus Capital Management, LLC, et al., C.A. No. 2:03-5048
Tom Kidwell, etc. v. Janus Capital Group, Inc., et al., C.A. No. 2:03-5242
George P. Tsetsekos, etc. v. Janus Capital Group, Inc., et al., C.A. No. 2:03-5354

SCHEDULE B

MDL-1577 -- In re Strong Mutual Funds Investment Litigation

District of New Jersey

Andrew D. Mule, et al. v. Strong Capital Management, Inc., et al., C.A. No. 2:03-4221

Southern District of New York

Selma Stone v. Strong Advisor Common Stock Fund, et al., C.A. No. 1:03-6916

Eastern District of Wisconsin

Gregory D. Coleman, etc. v. Strong Financial Corp., et al., C.A. No. 2:03-862

James Blevins v. Strong Capital Management, Inc., et al., C.A. No. 2:03-868

Thomas R. Jones v. Strong Financial Corp., et al., C.A. No. 2:03-884

Holly Painter v. Strong Capital Management, Inc., et al., C.A. No. 2:03-895

Steve LeFavour, etc. v. Strong Financial Corp., et al., C.A. No. 2:03-897

SCHEDULE C

MDL-1582 -- In re Bank One Mutual Funds Investment Litigation

Northern District of Illinois

William Pelak v. Bank One Corp., et al., C.A. No. 1:03-6591

District of New Jersey

Andrew D. Mule, et al. v. Strong Capital Management, Inc., et al., C.A. No. 2:03-4221
Andy Yijun Huang, et al. v. One Group Technology Fund, et al., C.A. No. 2:03-4514

Southern District of New York

Allan Dworkin v. One Group Technology Fund, et al., C.A. No. 1:03-6915
Charles Tischler v. Bank One Corp., et al., C.A. No. 1:03-6970
Amy Bloomfield v. Mark A. Beeson, et al., C.A. No. 1:03-6975

Southern District of Ohio

David Brett v. Bank One Corp., et al., C.A. No. 2:03-818

SCHEDULE D

MDL-1585 -- In re Bank of America Mutual Funds Investment Litigation

Central District of California

Leann Lin v. Bank of America Corp., et al., C.A. No. 2:03-6330
Kathleen A. Sussman, et al. v. Nations Capital Growth Fund, et al., C.A. No. 2:03-6957
Jean Marie Maggi, et al. v. Bank of America Corp., et al., C.A. No. 2:03-7249

District of New Jersey

John Golisano v. Bank of America Corp., et al., C.A. No. 2:03-4230
Roderick Rohrer v. Nations Capital Growth Fund, et al., C.A. No. 2:03-4496

Southern District of New York

Samuel T. Cohen v. Nations Capital Growth Fund, et al., C.A. No. 1:03-6847

SCHEDULE E

MDL-1590 -- In re Putnam Mutual Funds Investment Litigation

Northern District of California

Jacqueline Burton, et al. v. Marsh & McLennan Companies, Inc., et al., C.A. No. 3:03-4973

District of Delaware

Zachary Alan Starr, etc. v Putnam Investment Management, Inc., et al., C.A. No. 1:03-1023

District of Massachusetts

Diane Saunders v. Putnam American Government Income Fund, C.A. No. 1:03-12086

Sally A. Bulawsky, et al. v. Marsh & McLennan Companies, Inc., et al.,

C.A. No. 1:03-12094

Samuel M. Troutman, et al. v. Putnam American Government Income Fund, et al.,

C.A. No. 1:03-12116

Lawrence E. Jaffe, etc. v. Putnam American Government Income Fund, et al.,

C.A. No. 1:03-12162

Miranda Zuber, et al. v. Putnam Investment Management, LLC, C.A. No. 1:03-12175

Sara Gurno, et al. v. Putnam American Government Income Fund, et al.,

C.A. No. 1:03-12196

Ann Schneps Dubin, et al. v. Putnam Investment Management, LLC, C.A. No. 1:03-12209

Rochelle Meyer, etc. v. Putnam International Voyager Fund, et al., C.A. No. 1:03-12214

Southern District of New York

Shelia Schulman, et al. v. Putnam American Government Income Fund, et al.,

C.A. No. 1:03-8323

Dawn Maniskas v. Putnam American Government Income Fund, et al., C.A. No. 1:03-8368

Salvatore Piliere v. Putnam Global Income Trust, et al., C.A. No. 1:03-8407

Paul Angotta, et al. v. Putnam American Government Income Fund, et al.,

C.A. No. 1:03-8651

Kristin Garfield v. Putnam American Government Income Fund, et al., C.A. No. 1:03-8683

Ingeborg Engeler v. Putnam Investments Trust, et al., C.A. No. 1:03-8720

SCHEDULE F

MDL-1591 -- In re Alliance Capital Mutual Funds Investment Litigation

District of New Jersey

Milton Pfeiffer v. Alliance Capital Management, L.P., C.A. No. 2:03-4724
Roger Jee v. Alliance Capital Management Holding, L.P., et al., C.A. No. 2:03-4895
Marvin Goldfarb v. AllianceBernstein Growth & Income Fund, Inc., et al.,
C.A. No. 2:03-4962

Eastern District of New York

Felicia Bernstein v. Alliance Capital Management Holding, L.P., et al., C.A. No. 2:03-5087
Robert K. Finnell v. Alliance Capital Management Holding, L.P., et al., C.A. No. 2:03-5345

Southern District of New York

Nada Hindo, et al. v. Alliance Capital Management Holding, L.P., et al.,
C.A. No. 1:03-7765
George W. Bookhout, et al. v. Alliance Capital Management Holding, L.P., et al.,
C.A. No. 1:03-7955
Charles Healy v. Alliance Capital Management Holding, L.P., et al., C.A. No. 1:03-8008
Richard J. Abt v. Alliance Capital Management Holding, L.P., et al., C.A. No. 1:03-8202
Tracy Silverman v. Alliance Capital Management Holding, L.P., et al., C.A. No. 1:03-8274
Marlene Seybold v. Alliance Capital Management Holding, L.P., et al., C.A. No. 1:03-8278
Martine Stansbery, Jr. v. AXA Financial, Inc., C.A. No. 1:03-8282
Michael Bernstein, et al. v. Alliance Capital Management Holding, L.P., et al.,
C.A. No. 1:03-8350
Regina Kopelowitz v. AllianceBernstein Growth & Income Fund, Inc., et al.,
C.A. No. 1:03-8372
Robin Fernhoff, et al. v. AllianceBernstein Growth & Income Fund, Inc., et al.,
C.A. No. 1:03-8402
Timothy J. Plank v. Alliance Capital Management Holding, L.P., et al., C.A. No. 1:03-8466
Israel Grafstein v. AXA Financial, Inc., et al., C.A. No. 1:03-8685
Gary Frost v. Alliance Capital Management Holding, L.P., et al., C.A. No. 1:03-8722
Lori Weinrib v. AllianceBernstein Growth & Income Fund, Inc., et al., C.A. No. 1:03-8915
Blanchard D. Smith, Jr. v. AllianceBernstein Growth & Income Fund, Inc., et al.,
C.A. No. 1:03-8981

SCHEDULE G

MDL-1586 -- In re Mutual Funds Investment Litigation

Northern District of California

Jacqueline Burton, et al. v. Marsh & McLennan Companies, Inc., et al., C.A. No. 3:03-4973

Central District of California

Leann Lin v. Bank of America Corp., et al., C.A. No. 2:03-6330

Kathleen A. Sussman, et al. v. Nations Capital Growth Fund, et al., C.A. No. 2:03-6957

Jean Marie Maggi, et al. v. Bank of America Corp., et al., C.A. No. 2:03-7249

District of Colorado

Vivian Bernstein, et al. v. Janus Capital Management, LLC, et al., C.A. No. 1:03-1798

Ronald Abrams, et al. v. Janus Fund, et al., C.A. No. 1:03-1817

John G. Hill, Jr. v. Janus Capital Group, Inc., et al., C.A. No. 1:03-1847

Leona A. Marini, etc. v. Janus Investment Fund, et al., C.A. No. 1:03-1857

Priya Vadehera v. Janus Capital Group, Inc., et al., C.A. No. 1:03-1871

Tara Goldstein v. Janus Capital Group, Inc., et al., C.A. No. 1:03-1884

Vivian Bernstein v. Janus Capital Management, LLC, et al., C.A. No. 1:03-1909

John R. Lang, et al. v. Janus Fund, et al., C.A. No. 1:03-1942

William Silverman v. Janus Capital Group, Inc., et al., C.A. No. 1:03-1965

Richard Kaufman v. Janus Capital Group, Inc., et al., C.A. No. 1:03-1966

District of Delaware

Zachary Alan Starr, etc. v. Putnam Investment Management, Inc., et al., C.A. No. 1:03-1023

Northern District of Illinois

William Pelak v. Bank One Corp., et al., C.A. No. 1:03-6591

Glen Robinson v. One Group International Equity Index Fund, et al., C.A. No. 1:03-6986

Norman Maged v. One Group Technology Fund, et al., C.A. No. 1:03-7029

District of Massachusetts

Diane Saunders v. Putnam American Government Income Fund, C.A. No. 1:03-12086

Sally A. Bulawsky, et al. v. Marsh & McLennan Companies, Inc., et al.,

C.A. No. 1:03-12094

Samuel M. Troutman, et al. v. Putnam American Government Income Fund, et al.,

C.A. No. 1:03-12116

Lawrence E. Jaffe, etc. v. Putnam American Government Income Fund, et al.,

C.A. No. 1:03-12162

Miranda Zuber, et al. v. Putnam Investment Management, LLC, C.A. No. 1:03-12175

SCHEDULE G (page 2)

District of Massachusetts (continued)

Sara Gurno, et al. v. Putnam American Government Income Fund, et al.,
C.A. No. 1:03-12196
Ann Schneps Dubin, et al. v. Putnam Investment Management, LLC, C.A. No. 1:03-12209
Rochelle Meyer, etc. v. Putnam International Voyager Fund, et al., C.A. No. 1:03-12214

District of New Jersey

Andrew D. Mule, et al. v. Strong Capital Management, Inc., et al., C.A. No. 2:03-4221
John Golisano v. Bank of America Corp., et al., C.A. No. 2:03-4230
Arthur Sylvester v. Janus Capital Group, Inc., et al., C.A. No. 2:03-4261
Rhonda Vladimir v. Janus Capital Management LLC, et al., C.A. No. 2:03-4273
May Etsen, et al. v. Janus Fund, et al., C.A. No. 2:03-4369
Robert Corwin v. Thomas H. Bailey, et al., C.A. No. 2:03-4384
Robert K. Finnell, etc. v. Bank of America Corp., et al., C.A. No. 2:03-4446
Herbert Morris v. Janus Capital Management, LLC, et al., C.A. No. 2:03-4453
Roderick Rohrer v. Nations Capital Growth Fund, et al., C.A. No. 2:03-4496
Andy Yijun Huang, et al. v. One Group Technology Fund, et al., C.A. No. 2:03-4514
Milton Pfeiffer v. Alliance Capital Management, L.P., C.A. No. 2:03-4724
Robert Garfield, et al. v. Banc of America Capital Management, LLC, et al.,
C.A. No. 2:03-4855
Roger Jee v. Alliance Capital Management Holding, L.P., et al., C.A. No. 2:03-4895
Marvin Goldfarb v. AllianceBernstein Growth & Income Fund, Inc., et al.,
C.A. No. 2:03-4962

Eastern District of New York

Felicia Bernstein, etc. v. Alliance Capital Management Holding, LP, et al.,
C.A. No. 2:03-5087
Robert K. Finnell v. Alliance Capital Management Holding, L.P., et al., C.A. No. 2:03-5345

Southern District of New York

Carol Pestone v. Janus Capital Group, Inc., et al., C.A. No. 1:03-6760
Brian Wormley, et al. v. Janus Capital Group, Inc., et al., C.A. No. 1:03-6790
Samuel T. Cohen v. National Capital Growth Fund, et al., C.A. No. 1:03-6847
Selma Stone, et al. v. Janus Fund, et al., C.A. No. 1:03-6914
Allan Dworkin v. One Group Technology Fund, et al., C.A. No. 1:03-6915
Selma Stone v. Strong Advisor Common Stock Fund, et al., C.A. No. 1:03-6916
Tom Torelli v. Strong Financial Corp., et al., C.A. No. 1:03-6969
Charles Tischler v. Bank One Corp., et al., C.A. No. 1:03-6970
Amy Bloomfield v. Mark A. Beeson, et al., C.A. No. 1:03-6975
James Schultz v. Janus Capital Management, LLC, et al., C.A. No. 1:03-7123
Roger L. Bailey v. Janus Capital Management, LLC, et al., C.A. No. 1:03-7125

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Southern District of New York (continued)

Elsie Haig, et al. v. Janus Fund, et al., C.A. No. 1:03-7218
David Kuperschmid v. Strong Capital Management, Inc., et al., C.A. No. 1:03-7287
Jack Yarbrough, et al. v. Janus Fund, et al., C.A. No. 1:03-7333
Nechama Tepfer v. Janus Capital Group, Inc., C.A. No. 1:03-7337
Lori Reinhardt v. Strong Advisor Common Stock Fund, et al., C.A. No. 1:03-7438
Wathena Ann Forsee v. Janus Fund, et al., C.A. No. 1:03-7654
James M. Archinaco v. Janus Capital Group, Inc., et al., C.A. No. 1:03-7745
Nada Hindo, et al. v. AllianceBernstein Growth & Income Fund, C.A. No. 1:03-7765
John Armentano v. Janus Fund, et al., C.A. No. 1:03-7766
Isidore Zimmerman v. Thomas H. Bailey, C.A. No. 1:03-7910
George W. Bookhout, et al. v. Alliance Capital Management Holding, L.P., et al.,
C.A. No. 1:03-7955
Charles Healy v. Alliance Capital Management Holding, L.P., et al., C.A. No. 1:03-8008
Richard J. Abt v. Alliance Capital Management Holding, L.P., et al., C.A. No. 1:03-8202
Tracy Silverman v. Alliance Capital Management Holding, L.P., et al., C.A. No. 1:03-8274
Marlene Seybold v. Alliance Capital Management Holding, L.P., et al., C.A. No. 1:03-8278
Martine Stansbery, Jr. v. AXA Financial, Inc., C.A. No. 1:03-8282
Shelia Schulman, et al. v. Putnam American Government Income Fund, et al.,
C.A. No. 1:03-8323
Michael Bernstein, et al. v. Alliance Capital Management Holding, L.P., et al.,
C.A. No. 1:03-8350
Dawn Maniskas v. Putnam American Government Income Fund, et al., C.A. No. 1:03-8368
Regina Kopelowitz v. AllianceBernstein Growth & Income Fund, Inc., et al.,
C.A. No. 1:03-8372
Robin Fernhoff, et al. v. AllianceBernstein Growth & Income Fund, Inc., et al.,
C.A. No. 1:03-8402
Salvatore Piliere v. Putnam Global Income Trust, et al., C.A. No. 1:03-8407
Timothy J. Plank v. Alliance Capital Management Holding, L.P., et al., C.A. No. 1:03-8466
Paul Angotta, et al. v. Putnam American Government Income Fund, et al.,
C.A. No. 1:03-8651
Kristin Garfield v. Putnam American Government Income Fund, et al., C.A. No. 1:03-8683
Israel Grafstein v. AXA Financial, Inc., et al., C.A. No. 1:03-8685
Ingeborg Engeler v. Putnam Investments Trust, et al., C.A. No. 1:03-8720
Gary Frost v. Alliance Capital Management Holding, L.P., et al., C.A. No. 1:03-8722
Lori Weinrib v. AllianceBernstein Growth & Income Fund, Inc., et al., C.A. No. 1:03-8915
Blanchard D. Smith, Jr. v. AllianceBernstein Growth & Income Fund, Inc., et al.,
C.A. No. 1:03-8981

Southern District of Ohio

David Brett v. Bank One Corp., et al., C.A. No. 2:03-818
Pamela Dunlap v. One Group Technology Fund, et al., C.A. No. 2:03-916

SCHEDULE G (page 4)

Eastern District of Pennsylvania

Gloria Steinberg, et al. v. Janus Capital Management, LLC, et al.,
C.A. No. 2:03-5048

Tom Kidwell, etc. v. Janus Capital Group, Inc., et al., C.A. No. 2:03-5242

George P. Tsetsekos, etc. v. Janus Capital Group, Inc., et al., C.A. No. 2:03-5354

Eastern District of Wisconsin

Gregory D. Coleman, etc. v. Strong Financial Corp., et al., C.A. No. 2:03-862

James Blevins v. Strong Capital Management, Inc., et al., C.A. No. 2:03-868

Jenell Marie Halvorson v. Strong Advisor Common Stock Fund, et al., C.A. No. 2:03-872

Thomas R. Jones v. Strong Financial Corp., et al., C.A. No. 2:03-884

Holly Painter v. Strong Capital Management, Inc., et al., C.A. No. 2:03-895

Congregation Ohel Torah v. Strong Capital Management, Inc., et al., C.A. No. 2:03-896

Steve LeFavour, etc. v. Strong Financial Corp., Inc., et al., C.A. No. 2:03-897

Jackson T. Ferris, et al. v. Strong Capital Management, Inc., et al., C.A. No. 2:03-998

EXHIBIT 4

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 03-12474-RGS

MARK E. FEINERSTEIN, ET AL

v.

MARSH & MCLENNAN COMPANIES, INC., ET AL

ORDER ON MOTION TO STAY PROCEEDINGS

March 3, 2004

STEARNS, D.J.

Defendants' request that the proceedings in the above-captioned case be stayed pending a ruling by the Judicial Panel on Multidistrict Litigation is ALLOWED.

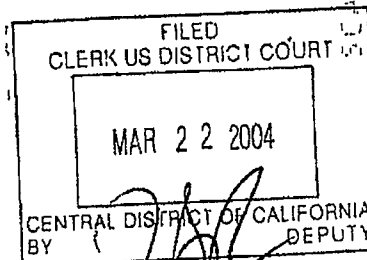
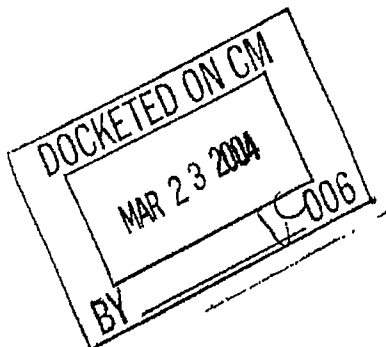
SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

ORIGINAL

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United States District Court
Central District of California
Western Division

MIKE SAYEGH,
Plaintiff,

v.

JANUS CAPITAL CORPORATION, *et al.*,
Defendants.

CV 03-08736 TJH (VBKx)

Order

The Court has considered Defendants motions to stay pending a decision regarding transfer, together with the moving and opposing papers

It is Ordered that the motion be, and hereby is, Granted.

Date: March 22, 2004

Terry J. Hatter, Jr.
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

WARREN SHERMAN, Derivatively
on behalf of ONE GROUP'S
DIVERSIFIED INTERNATIONAL
FUND,

Plaintiff,

v.

PETER C. MARSHALL, et al.,

Defendants.

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Case No. 2:03-cv-1037

Judge Holschuh

Magistrate Judge Kemp

ORDER

This matter is currently before the Court on three pending motions: (1) the Bank One Defendants' motion to stay proceedings in the above-captioned case pending a decision by the Judicial Panel on Multidistrict Litigation; (2) Plaintiff's motion to remand; and (3) the Bank One Defendants' motion for oral argument on Plaintiff's motion to remand.

The Judicial Panel on Multidistrict Litigation is scheduled to hear oral argument on January 29, 2004, concerning the Bank One Defendants' request to transfer to the United States District Court for the Southern District of New York, and consolidate for pre-trial purposes, more than 130 lawsuits involving similar allegations of mutual fund fraud. At least six of those suits, including the above-captioned action, have been filed in the Southern District of Ohio. The Bank One Defendants have requested that this Court stay the above-captioned action pending a decision by the Judicial Panel on Multidistrict Litigation. They note that Plaintiff in this case raises allegations that are nearly identical to those raised in twenty-two other cases filed against Bank One Defendants. Of those twenty-two cases, five were removed from state court to federal court and raise similar jurisdictional questions. The Bank One Defendants seek to avoid litigating the same issues in

multiple forums. They contend that, in the interest of judicial economy, and to avoid inconsistent results, this Court should issue the requested stay and, assuming that the mutual fund cases are consolidated for pretrial purposes, allow the transferee judge to rule on the motions to remand.

Plaintiff, however, claims that this action was improperly removed from state court and should be remanded immediately because this Court lacks subject matter jurisdiction. There is no complete diversity of citizenship and, although Plaintiff's Complaint refers generally to various federal regulations governing mutual funds, he has asserted only state law claims, including breach of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets, and unjust enrichment. Defendants contend that removal was nevertheless proper because these claims raise novel and substantial issues of federal law, and their resolution will require interpretation of the duties created by numerous federal regulations. Defendants have requested oral argument concerning Plaintiff's motion to remand.

The parties agree that this Court has broad discretion to either stay the proceedings or to rule on the pending motion to remand. MDL Panel Rule 1.5 states, "[t]he pendency of a motion . . . before the Panel concerning transfer . . . does not affect . . . pretrial proceedings in the district court in which the action is pending and does not in any way limit the pretrial jurisdiction of that court." Nevertheless, "it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved." Rivers v. The Walt Disney Co., 980 F. Supp. 1358, 1362 (C.D. Cal. 1997).

In this Court's view, it is in the interest of judicial economy to stay the proceedings in this case until the Judicial Panel on Multidistrict Litigation meets later this month to decide whether the mutual fund cases should be consolidated for pretrial purposes. A similar stay has already been

issued in Huang v. Marshall, Case No. 2:03-cv-1038, a related case pending before Judge George C. Smith.¹ This litigation is in its very early stages and it does not appear that Plaintiff will suffer any substantial prejudice if the stay is granted. His motion to remand remains pending and, depending on the outcome of the hearing before the Judicial Panel on Multidistrict Litigation, will be ruled upon by either the undersigned judge or the transferee judge. On the other hand, if the stay is not granted, there is a great risk that the Bank One Defendants will be burdened with duplicative discovery requests and be subject to inconsistent rulings in multiple forums.

For the reasons set forth above, Defendants' motion to stay (Record at 6) is **GRANTED**. Accordingly, all proceedings in the above-captioned action are **STAYED** until the Judicial Panel for Multidistrict Litigation advises the parties and this Court of its decision concerning the request to consolidate all of the mutual fund cases for pretrial purposes. The Court makes no determination at this time concerning the merits of Plaintiff's motion to remand (Record at 10) or Defendants' request for oral argument on Plaintiff's motion to remand (Record at 24).

IT IS SO ORDERED.

Date: January 14, 2004

/s/ John D. Holschuh
John D. Holschuh, Judge
United States District Court

¹ A motion for reconsideration remains pending in Huang.